

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 7371)
6 Pensler for Senate and Justin Brown in his) **CASE CLOSURE UNDER THE**
7 official capacity as treasurer,) **ENFORCEMENT PRIORITY**
8 Sandy Pensler,) **SYSTEM**
9 Brian Calley for Governor and Jordan Bush in his)
10 official capacity as treasurer, and)
11 Brian Calley)
12)

13
14 **GENERAL COUNSEL'S REPORT**

15 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
16 basis to allocate its resources and decide which matters to pursue. These criteria include, without
17 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
18 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
19 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
20 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
21 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
22 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
23 discretion to dismiss cases under certain circumstances or to find no reason to believe the Act has
24 been violated.

25 The Office of General Counsel has scored MUR 7371 as a low-rated matter and has
26 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the
27 reasons set forth below, we recommend that the Commission find no reason to believe that Pensler

¹ The EPS rating information is as follows: Complaint Filed: April 23, 2018. Brian Calley for Governor Committee Response Filed: May 15, 2018. Pensler for Senate Response Filed: June 14, 2018. No responses received from Sandy Pensler and Brian Calley.

1 for Senate and Justin Brown in his official capacity as treasurer (“the Pensler Committee”),² Sandy
2 Pensler, Brian Calley for Governor and Jordan Bush in his official capacity as treasurer (“the Calley
3 Committee”), and Brian Calley violated the Act or Commission regulations.

4 Based upon news reports, Complainant alleges that the nominating petition submitted by
5 Calley included at least 47 sheets containing signatures collected for Pensler’s nominating petition
6 and, therefore, asserts that the Calley Committee gathered signatures for Pensler’s nominating
7 petition.³ The Calley Committee denies that it paid to gather signatures for Pensler; rather, it states
8 that it paid a vendor to collect signatures for Calley.⁴ The Pensler Committee also states that it paid
9 a vendor to collect signatures for its own nominating petition, no other campaign subsidized its
10 collection process, and it does not know why the collection vendor held petitions for more than one
11 candidate.⁵

12 The Act and Commission regulations provide that no person may make contributions to any
13 candidate or his authorized political committee that exceed the contribution limits established by
14 52 U.S.C. §30116.⁶ The provision of any goods or services without charge or at a charge that is less
15 than the usual and normal charge for such goods or services is an in-kind contribution.⁷

² Sandy Pensler is a candidate for the U.S. Senate for Michigan. Pensler for Senate is his principal campaign committee. Brian Calley is a candidate for Michigan’s Governor. Brian Calley for Governor is his principal campaign committee.

³ Compl. at 1-2 (Apr. 23, 2018).

⁴ Calley Committee Resp. at 1 (May 15, 2018).

⁵ Pensler Committee Resp. at 1, Exs. 1-11 (June 14, 2018).

⁶ 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b). *See also* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61 (prohibition on federal candidate or his agents from soliciting, receiving, directing, transferring or spending funds in connection with a federal campaign unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act). The Complaint suggests that the Pensler Committee may have accepted funds in violation of 52 U.S.C. § 30125(e)(1)(A), but provides no further substantiation other than a reference to the 47 petition sheets.

⁷ 11 C.F.R. § 100.52(d).

1 The news reports the Complaint cites are the only sources that suggest that the Calley
2 Committee contributed to the Pensler Committee by gathering signatures for Pensler's nominating
3 petition.⁸ Both committees specifically deny that the Calley Committee paid to gather signatures for
4 the Pensler Committee, and the Pensler Committee's reports disclose disbursements to its own
5 signature collection firm.⁹ Therefore, we recommend that the Commission find no reason to believe
6 that Pensler for Senate and Justin Brown, in his official capacity as treasurer, Sandy Pensler, Brian
7 Calley for Governor and Jordan Bush, in his official capacity as treasurer, and Brian Calley violated
8 the Act or Commission regulations.

9 **RECOMMENDATIONS**

- 10
11 1. Find no reason to believe that Pensler for Senate and Justin Brown in his official capacity
12 as treasurer, Sandy Pensler, Brian Calley for Governor and Jordan Bush in his official
13 capacity as treasurer, and Brian Calley violated the Act or Commission regulations;
14
15 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
16
17 3. Close the file as to all Respondents.

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20 Lisa J. Stevenson
21 Acting General Counsel
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24 Kathleen M. Guith
25 Associate General Counsel
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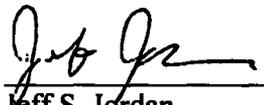
28 7.10.18
29 Date

BY: 
30 Stephen Gura
31 Deputy Associate General Counsel
32

⁸ The Complainant cites to reports indicating that both committees used the same vendor. However, the Calley Committee states it used The Stroud Company, while the Pensler Committee states (and provides documentation) it used 190 Personnel LLC. *See* Calley Committee Resp. at 1; Pensler Committee Resp. at 1.

⁹ In its response, the Pensler Committee asserts that it disclosed \$26,154 in payments for signature collection. Pensler Committee Resp. at 1. The Pensler Committee actually disclosed a total of \$79,665 in payments to its signature collection firm, 190 Personnel LLC, in its April 2018 Quarterly Report.

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Jeff S. Jordan
Assistant General Counsel



Kristina M. Portner
Attorney

Attachment:
Factual and Legal Analysis

10033334-404

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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3 **RESPONDENTS:** Pensler for Senate and MUR 7371
4 Justin Brown in his official capacity as treasurer,
5 Sandy Pensler,
6 Brian Calley for Governor and
7 Jordan Bush in his official capacity as treasurer, and
8 Brian Calley
9

10 This matter was generated by a complaint alleging violations of the Federal Election
11 Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Pensler for
12 Senate and Justin Brown in his official capacity as treasurer (“the Pensler Committee”), Sandy
13 Pensler, Brian Calley for Governor and Jordan Bush in his official capacity as treasurer (“the
14 Calley Committee”), and Brian Calley. It was scored as a low-rated matter under the
15 Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to
16 allocate its resources and decide which matters to pursue.

17 Based upon news reports, Complainant alleges that the nominating petition submitted by
18 Calley included at least 47 sheets containing signatures collected for Pensler’s nominating
19 petition and, therefore, asserts that the Calley Committee gathered signatures for Pensler’s
20 nominating petition.¹ The Calley Committee denies that it paid to gather signatures for Pensler;
21 rather, it states that it paid a vendor to collect signatures for Calley.² The Pensler Committee
22 also states that it paid a vendor to collect signatures for its own nominating petition, no other
23 campaign subsidized its collection process, and it does not know why the collection vendor held
24 petitions for more than one candidate.³

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³ Pensler Committee Resp. at 1, Exs. 1-11 (June 14, 2018).

1 The Act and Commission regulations provide that no person may make contributions to
2 any candidate or his authorized political committee that exceed the contribution limits
3 established by 52 U.S.C. §30116.⁴ The provision of any goods or services without charge or at
4 a charge that is less than the usual and normal charge for such goods or services is an in-kind
5 contribution.⁵

6 The news reports the Complaint cites are the only sources that suggest that the Calley
7 Committee contributed to the Pensler Committee by gathering signatures for Pensler's
8 nominating petition.⁶ Both committees specifically deny that the Calley Committee paid to
9 gather signatures for the Pensler Committee, and the Pensler Committee's reports disclose
10 disbursements to its own signature collection firm.⁷ Therefore, the Commission finds no reason
11 to believe that Pensler for Senate and Justin Brown, in his official capacity as treasurer, Sandy
12 Pensler, Brian Calley for Governor and Jordan Bush, in his official capacity as treasurer, and
13 Brian Calley violated the Act or Commission regulations.

⁴ 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b). *See also* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61 (prohibition on federal candidate or his agents from soliciting, receiving, directing, transferring or spending funds in connection with a federal campaign unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act). The Complaint suggests that the Pensler Committee may have accepted funds in violation of 52 U.S.C. § 30125(e)(1)(A), but provides no further substantiation other than a reference to the 47 petition sheets.

⁵ 11 C.F.R. § 100.52(d).

⁶ The Complainant cites to reports indicating that both committees used the same vendor. However, the Calley Committee states it used The Stroud Company, while the Pensler Committee states (and provides documentation) it used 190 Personnel LLC. *See* Calley Committee Resp. at 1; Pensler Committee Resp. at 1.

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